

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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2007 JUL 18 P 3:30

CLERK
MIDDLE DISTRICT ALA

YOLANDA R. EFFINGER,

Plaintiff,

v.

WINN-DIXIE MONTGOMERY, INC.

Defendant.

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Case No.: 2:07-cv-00657-ID

NOTICE OF REMOVAL

COMES NOW Winn-Dixie Montgomery, Inc., (hereinafter "Winn-Dixie"), Defendant in the above-styled lawsuit and pursuant to 28 U.S.C. §1441(a) and (b), files this Notice of Removal of this cause from the Circuit Court for Montgomery County, Alabama to the United States District Court for the Middle District of Alabama, Northern Division. As grounds for the removal of this cause to this Honorable Court, these Defendants show unto the Court has follows:

1. On June 11, 2007, the Plaintiff commenced this action in the Circuit Court for Montgomery County, Alabama. The Plaintiff states in her Complaint that she is a resident of Dallas, County, Alabama. A copy of the Plaintiff's Complaint is attached hereto as Exhibit "A".

2. Defendant Winn-Dixie received service of process of the Plaintiff's Summons and Complaint on or about June 18, 2007. Winn-Dixie has not filed an Answer or any other pleading in the Circuit Court of Montgomery, County, Alabama. Defendant Winn-Dixie is a foreign corporation. Said corporation is incorporated and

has its principal place of business in a state other than the State of Alabama.

3. The Plaintiff names fictitious Defendants in her Complaint. For purposes of removal, "the citizenship of Defendants sued under fictitious names shall be disregarded". See 28 U.S.C. §1441(a).

4. Diversity of citizenship exists in this matter. See 28 U.S.C. §1332(a)(1).

5. The Plaintiff's Complaint contains a demand for Compensatory damages in the sum of \$150,000.00; Special damages in the sum of \$150,000.00; and General damages in the sum of \$12,500.00. The amount in controversy, exclusive of interest and costs, is in excess of \$75,000.00.


6. Based upon diversity of citizenship and the amount in controversy, this Court has original jurisdiction over this cause pursuant to 28 U.S.C. §1332(a)(1).

7. Pursuant to 28 U.S.C. §1446(b) the Removal of this cause to the court is timely.

8. Pursuant to 28 U.S.C. §1446(d), the Defendant has given written notice of the filing of this Removal to the Plaintiff and has also filed a copy of said Notice with the Clerk of the Circuit Court for Montgomery County, Alabama. See Exhibit "B" and "C".

WHEREFORE, the above premises having been considered, the Defendant requests this Court to make and enter the proper orders to effectuate the removal of this cause from the Circuit Court of Montgomery County, Alabama to the United States District Court for the Middle District of Alabama, Northern Division, and that no further or other proceedings shall be had with respect to this cause in the Circuit

Court for Montgomery County, Alabama.




RANDALL MORGAN [MOR037]
Defendant Winn-Dixie Montgomery, Inc

OF COUNSEL:
HILL, HILL, CARTER, FRANCO,
COLE & BLACK, P.C.
425 South Perry Street
P.O. Box 116
Montgomery, Alabama 36101-0116
(334) 834-7600
(334) 263-5969..FAX

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was duly served via E-Mail and by placing a copy of same in the U.S. mail, properly addressed and first class postage prepaid this the 18TH day of July 2007 upon the following:

Ronald B. Hatcher, Esq.
P.O. Box 161442
Atlanta, GA 30321



OF COUNSEL

State of Alabama
Unified Judicial System**SUMMONS
-CIVIL-**

Case Number

Form C-34

Rev 6/88

CV-2007-942

IN THE Circuit COURT OF Montgomery COUNTYPlaintiff Yolanda R. Effinger v. Defendant Winn Dixie Montgomery, Inc.NOTICE TO Winn Dixie Montgomery, Inc.c/o CSC Lawyers, Inc Svc, 57 Adams Ave, Montgomery 36104THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY Ronald B. Hatcher WHOSE ADDRESS ISPO Box 161442
Atlanta GA 30321THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure

☒ You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant.☐ Service by certified mail of this summons is initiated upon the written request of _____ pursuant to the Alabama Rules of Civil Procedure.Date 6/14/07

Clerk/Register

By: La☐ Certified Mail is hereby requested.Ronald B. Hatcher
Plaintiff's/Attorney's Signature
HAT002

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____ (Date)☐ I certify that I personally delivered a copy of the Summons and Complaint to _____ in _____ County, Alabama on _____ (Date)

Date

Type of Process Server

Server's Signature

Address of Server

Phone Number of Server

EXHIBITA

EXECUTED BY SERVING
A COPY OF THE WITHIN

Wesley L. Montgomery

Chris Russell

This the 14 June 07

D. T. MAF
Sheriff Montgomery County

By Chris Russell
Civil Process Server

670

2:00

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

YOLANDA R. EFFINGER,
Plaintiff,

v.

WINN DIXIE MONTGOMERY
INC.,

and

A and B, Fictitious Party Defendants
Being any other Individual, Business,
or Corporation who were involved in the
actions complained of, whose names will
be added by amendment when
ascertained;

Jointly and Severally,
Defendants.

Case No.

CV-2007-942

Jury Demand Endorsed Hereon

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FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY

COMPLAINT

1. Plaintiff, is and at all times mentioned in this complaint was, a resident of Dallas County, Alabama.
2. Defendant, Winn Dixie Montgomery, Inc. is, and at all times mentioned in this complaint was, a corporation organized and existing under the laws of the State of Florida duly licensed to operate a store located at Winn Dixie #0531, 4035 Eastern Boulevard, Montgomery, Montgomery County, Alabama.
3. Plaintiff sues the above fictitious defendants based upon information and belief that each of the defendants were negligently or legally responsible for the events referred to in the complaint, and negligently or unlawfully caused the injuries and

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damages alleged in this complaint. The true names and capacities of each fictitious defendant shall be added by plaintiff when ascertained.

4. Defendant Winn Dixie Montgomery, Inc. can be served with summons and complaint in care of its registered agent CSC Lawyers Incorporating SVC, Inc. 57 Adams Avenue, Montgomery, AL 36104.

5. Plaintiff states that at all times relevant herein, said fictitious defendants were agents and employees of Winn Dixie Montgomery, Inc. acting within the line and scope of such agency and employment.

6. On or about August 20, 2006 at approximately 5:00 PM, Plaintiff was on the premises of defendants purchasing groceries. After paying for her groceries at registered 7, she walked approximately 3 steps to get a shopping cart for some of her purchases. Just prior to reaching the cart, plaintiff suddenly and without warning slipped on an unknown liquid substance and fell violently to the floor causing plaintiff to sustain serious injuries to her upper back, lower back, buttocks and left knee, and other damages described herein.

7. Plaintiff states that all times relevant herein she was exercising due care for her own safety and not distracted by any event, thing or person.

8. Defendants, as the owners, operators, agents and employees of such grocery store open to the general public, owed a duty to plaintiff to keep the premises of the store, including the floor, in a reasonably safe condition for plaintiff and other customers.

9. Defendants, in breach of its duties, negligently and carelessly:

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a. Failed to maintain the floor of the grocery store in a reasonably safe condition.

b. Allowed a slippery liquid substance to remain on its floor when defendant knew, or should have know through the exercise of reasonable care , that such substance constituted an unreasonable risk of harm to plaintiff and others.

c. Failed to warn plaintiff of the danger presented by the liquid substance on the floor.

d. Failed to install a non-slip surface on the floor of the store; and

e. Failed to otherwise exercise due care with respect to the matters alleged in this complaint.

10. Plaintiff states that she had no opportunity to notice the liquid substance before she fell on it, and that Defendants at all times herein possessed actual and superior knowledge of its presence.

11. As a direct and proximate result of the negligence of defendants, plaintiff slipped and fell while on defendants' premises.

12. As a further direct and proximate result of the negligence of defendants, plaintiff sustained the following injuries known to date:

- a. Cervical strain
- b. Low back Sprain
- c. Muscle Spasms
- d. Contusion left knee and tendonitis
- e. Whole body pain

13. As a further direct and proximate result of the negligence of defendants, plaintiff suffered and will continue to suffer damages for following items in the following estimated amounts to date:

Medical Treatment	\$5,000
Physical Therapy	\$3,000

-4-

Medical Tests	\$2,500
Loss of Wages	\$20,000
Pain and Suffering	\$100,000
Future Medicals	\$10,000

Plaintiff reserve the right to amend this itemization of special damages prior to trial.

14. Plaintiff states that she has also suffered general damages in the sum of \$2,500.

WHEREFORE, Plaintiff demands judgments against defendants, jointly and severally, as follows:

- a. Compensatory damages in the sum of \$150,000;
- b. Special damages in the sum of \$150,000;
- c. General damages in the sum of \$12,500;
- d. Plaintiff demands trial by jury; and
- e. Such other damages, costs and fees to which she is entitled to by law or equity.



Ronald B. Hatcher
Attorney for Plaintiff
AL Code: HAT-002
P. O. Box 161442
Atlanta, GA 30321
(404) 526-9440

MEDIATION REQUESTED: ☐ YES ☐ NO ☐ UNDECIDED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

YOLANDA R. EFFINGER,

Plaintiff,

v.

WINN-DIXIE MONTGOMERY, INC.

Defendant.

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Case No.:

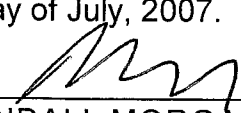
2:07-cv-657-ID

NOTICE TO PLAINTIFF ATTORNEY OF REMOVAL

To: Ronald B. Hatcher, Esq.
P.O. Box 161442
Atlanta, GA 30321

PLEASE TAKE NOTICE that the Defendant Winn-Dixie Montgomery, Inc., has on this 18th day of July, 2007, filed in the United States District Court for the Middle District of Alabama, Northern Division, the Notice of Removal to remove this case, Case No. CV-2007-942 from the Circuit Court of Montgomery County, Alabama, to the United States District Court for the Middle District of Alabama, Northern Division. You are also advised that a true and correct copy of the Notice of Removal has been filed with the Clerk of the Circuit Court of Montgomery County, Alabama, which has effected removal. Copies of the Notice of Removal and the Notice to the Circuit Court Clerk of Montgomery County, Alabama, are attached hereto.

Respectfully submitted this the 18th day of July, 2007.



RANDALL MORGAN [MOR037]
Defendant Winn-Dixie Montgomery, Inc

EXHIBIT

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OF COUNSEL:

HILL, HILL, CARTER, FRANCO,

COLE & BLACK, P.C.

425 South Perry Street

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Montgomery, Alabama 36101-0116

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OF COUNSEL

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

YOLANDA R. EFFINGER,

Plaintiff,

v.

WINN-DIXIE MONTGOMERY, INC.

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Case No.: CV-2007-942


Winn-Dixie Montgomery, Inc.

NOTICE OF FILING NOTICE OF REMOVAL

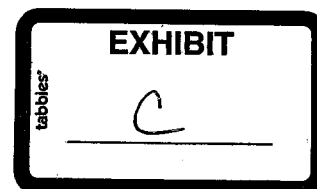
TO: Ms. Melissa Rittenour, Clerk
Montgomery County Circuit Court
251 South Lawrence Street
Montgomery, Alabama 36104

NOTICE IS HEREBY GIVEN that, pursuant to provisions of 28 U.S.C. §§ 1441 and 1331, the Defendant Winn-Dixie Montgomery, Inc. has on the 18th day of July, 2007, filed in the District Court of the United States for the Middle District of Alabama, Northern Division, a Notice of Removal for Case CV-2007-942 from the Circuit Court of Montgomery County, Alabama, to the District Court of the United States for the Middle District of Alabama, Northern Division. A copy of the Notice of Removal is attached hereto.

Done this 18th day of July, 2007.



RANDALL MORGAN [MOR037]
Defendant Winn-Dixie Montgomery, Inc



OF COUNSEL:
HILL, HILL, CARTER, FRANCO,
COLE & BLACK, P.C.
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